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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15

16 **Scott Johnson**

17 Plaintiff,

18 v.

19 **Landess Institute, LLC**, a  
20 California Limited Liability  
Company;  
YSL Inc., a California Corporation

21 Defendants.

22 **Case No.**

23 **Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

24 Plaintiff Scott Johnson complains of Landess Institute, LLC, a  
25 California Limited Liability Company; YSL Inc., a California Corporation; and  
26 alleges as follows:

27  
28 **PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a  
2 level C-5 quadriplegic. He cannot walk and also has significant manual  
3 dexterity impairments. He uses a wheelchair for mobility and has a specially  
4 equipped van.

5. Defendant Landess Institute, LLC owned the real property located at or  
6 about 3076 Landess Ave, San Jose, California, between May 2019 and July

1 2020.

2       3. Defendant Landess Institute, LLC owns the real property located at or  
3 about 3076 Landess Ave, San Jose, California, currently.

4       4. Defendant YSL Inc. owned TOGO's Sandwiches located at or about  
5 3076 Landess Ave, San Jose, California, between May 2019 and July 2020.

6       5. Defendant YSL Inc. owns TOGO's Sandwiches ("Restaurant") located  
7 at or about 3076 Landess Ave, San Jose, California, currently.

8       6. Plaintiff does not know the true names of Defendants, their business  
9 capacities, their ownership connection to the property and business, or their  
10 relative responsibilities in causing the access violations herein complained of,  
11 and alleges a joint venture and common enterprise by all such Defendants.  
12 Plaintiff is informed and believes that each of the Defendants herein is  
13 responsible in some capacity for the events herein alleged, or is a necessary  
14 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
15 the true names, capacities, connections, and responsibilities of the Defendants  
16 are ascertained.

17

18       **JURISDICTION & VENUE:**

19       7. The Court has subject matter jurisdiction over the action pursuant to 28  
20 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
21 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
23 of action, arising from the same nucleus of operative facts and arising out of  
24 the same transactions, is also brought under California's Unruh Civil Rights  
25 Act, which act expressly incorporates the Americans with Disabilities Act.

26       9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
27 founded on the fact that the real property which is the subject of this action is  
28 located in this district and that Plaintiff's cause of action arose in this district.

1  
2     **FACTUAL ALLEGATIONS:**

3     10. Plaintiff went to the Restaurant in May 2019, June 2019 and July 2020  
4 with the intention to avail himself of its goods motivated in part to determine  
5 if the defendants comply with the disability access laws.

6     11. The Restaurant is a facility open to the public, a place of public  
7 accommodation, and a business establishment.

8     12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed  
9 to provide wheelchair accessible parking in conformance with the ADA  
10 Standards as it relates to wheelchair users like the plaintiff.

11     13. The Restaurant provides parking to its customers but fails to provide  
12 wheelchair accessible parking.

13     14. One problem that plaintiff encountered is that the two parking spaces  
14 marked and reserved for persons with disabilities are not dispersed and  
15 located on the shortest accessible routes to the accessible entrances.  
16 Previously, the parking spaces reserved for persons with disabilities used to be  
17 located in the center of the parking lot and they were dispersed so that they  
18 were accessible for plaintiff.

19     15. Plaintiff believes that there are other features of the parking spaces that  
20 likely fail to comply with the ADA Standards and seeks to have fully compliant  
21 parking for wheelchair users.

22     16. On information and belief the defendants currently fail to provide  
23 wheelchair accessible parking.

24     17. Additionally, on the dates of the plaintiff's visits, the defendants failed  
25 to provide wheelchair accessible dining surfaces in conformance with the ADA  
26 Standards as it relates to wheelchair users like the plaintiff.

27     18. The Restaurant provides dining surfaces to its customers but fails to  
28 provide wheelchair accessible dining surfaces.

1       19. One problem that plaintiff encountered is the lack of sufficient knee or  
2 toe clearance under the dining surfaces for wheelchair users.

3       20. Plaintiff believes that there are other features of the dining surfaces that  
4 likely fail to comply with the ADA Standards and seeks to have fully compliant  
5 dining surfaces for wheelchair users.

6       21. On information and belief the defendants currently fail to provide  
7 wheelchair accessible dining surfaces.

8       22. These barriers relate to and impact the plaintiff's disability. Plaintiff  
9 personally encountered these barriers.

10      23. As a wheelchair user, the plaintiff benefits from and is entitled to use  
11 wheelchair accessible facilities. By failing to provide accessible facilities, the  
12 defendants denied the plaintiff full and equal access.

13      24. The failure to provide accessible facilities created difficulty and  
14 discomfort for the Plaintiff.

15      25. The defendants have failed to maintain in working and useable  
16 conditions those features required to provide ready access to persons with  
17 disabilities.

18      26. The barriers identified above are easily removed without much  
19 difficulty or expense. They are the types of barriers identified by the  
20 Department of Justice as presumably readily achievable to remove and, in fact,  
21 these barriers are readily achievable to remove. Moreover, there are numerous  
22 alternative accommodations that could be made to provide a greater level of  
23 access if complete removal were not achievable.

24      27. Plaintiff will return to the Restaurant to avail himself of its goods and to  
25 determine compliance with the disability access laws once it is represented to  
26 him that the Restaurant and its facilities are accessible. Plaintiff is currently  
27 deterred from doing so because of his knowledge of the existing barriers and  
28 his uncertainty about the existence of yet other barriers on the site. If the

1 barriers are not removed, the plaintiff will face unlawful and discriminatory  
 2 barriers again.

3       28. Given the obvious and blatant nature of the barriers and violations  
 4 alleged herein, the plaintiff alleges, on information and belief, that there are  
 5 other violations and barriers on the site that relate to his disability. Plaintiff will  
 6 amend the complaint, to provide proper notice regarding the scope of this  
 7 lawsuit, once he conducts a site inspection. However, please be on notice that  
 8 the plaintiff seeks to have all barriers related to his disability remedied. See  
 9 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 10 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 11 disability removed regardless of whether he personally encountered them).

12

**13 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
 14 WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all  
 15 Defendants.) (42 U.S.C. section 12101, et seq.)**

16       29. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 17 again herein, the allegations contained in all prior paragraphs of this  
 18 complaint.

19       30. Under the ADA, it is an act of discrimination to fail to ensure that the  
 20 privileges, advantages, accommodations, facilities, goods and services of any  
 21 place of public accommodation is offered on a full and equal basis by anyone  
 22 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 23 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 24           a. A failure to make reasonable modifications in policies, practices,  
 25 or procedures, when such modifications are necessary to afford  
 26 goods, services, facilities, privileges, advantages, or  
 27 accommodations to individuals with disabilities, unless the  
 28 accommodation would work a fundamental alteration of those

- 1                   services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 2                   b. A failure to remove architectural barriers where such removal is  
3                   readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
4                   defined by reference to the ADA Standards.
- 5                   c. A failure to make alterations in such a manner that, to the  
6                   maximum extent feasible, the altered portions of the facility are  
7                   readily accessible to and usable by individuals with disabilities,  
8                   including individuals who use wheelchairs or to ensure that, to the  
9                   maximum extent feasible, the path of travel to the altered area and  
10                  the bathrooms, telephones, and drinking fountains serving the  
11                  altered area, are readily accessible to and usable by individuals  
12                  with disabilities. 42 U.S.C. § 12183(a)(2).

13                  31. When a business provides facilities such as parking, it must provide  
14                  accessible parking.

15                  32. Here, accessible parking has not been provided in conformance with the  
16                  ADA Standards.

17                  33. When a business provides facilities such as dining surfaces, it must  
18                  provide accessible dining surfaces.

19                  34. Here, accessible dining surfaces have not been provided in  
20                  conformance with the ADA Standards.

21                  35. The Safe Harbor provisions of the 2010 Standards are not applicable  
22                  here because the conditions challenged in this lawsuit do not comply with the  
23                  1991 Standards.

24                  36. A public accommodation must maintain in operable working condition  
25                  those features of its facilities and equipment that are required to be readily  
26                  accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

27                  37. Here, the failure to ensure that the accessible facilities were available  
28                  and ready to be used by the plaintiff is a violation of the law.

1           **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
2           RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
3           Code § 51-53.)

4           38. Plaintiff repleads and incorporates by reference, as if fully set forth  
5           again herein, the allegations contained in all prior paragraphs of this  
6           complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
7           that persons with disabilities are entitled to full and equal accommodations,  
8           advantages, facilities, privileges, or services in all business establishment of  
9           every kind whatsoever within the jurisdiction of the State of California. Cal.  
10          Civ. Code §51(b).

11          39. The Unruh Act provides that a violation of the ADA is a violation of the  
12          Unruh Act. Cal. Civ. Code, § 51(f).

13          40. Defendants’ acts and omissions, as herein alleged, have violated the  
14          Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
15          rights to full and equal use of the accommodations, advantages, facilities,  
16          privileges, or services offered.

17          41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
18          discomfort or embarrassment for the plaintiff, the defendants are also each  
19          responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
20          (c).)

21          42. Although the plaintiff encountered frustration and difficulty by facing  
22          discriminatory barriers, even manifesting itself with minor and fleeting  
23          physical symptoms, the plaintiff does not value this very modest physical  
24          personal injury greater than the amount of the statutory damages.

25

26           **PRAYER:**

27          Wherefore, Plaintiff prays that this Court award damages and provide  
28          relief as follows:

- 1       1. For injunctive relief, compelling Defendants to comply with the
- 2       Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
- 3       plaintiff is not invoking section 55 of the California Civil Code and is not
- 4       seeking injunctive relief under the Disabled Persons Act at all.
- 5       2. Damages under the Unruh Civil Rights Act, which provides for actual
- 6       damages and a statutory minimum of \$4,000 for each offense.
- 7       3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
- 8       to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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10      Dated: November 16, 2020      CENTER FOR DISABILITY ACCESS  
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12      
13      By:

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15    Amanda Seabock, Esq.  
16    Attorney for plaintiff  
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